

**FAIR EMPLOYMENT & HOUSING COMMISSION**

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**Modified Proposed Regulations on Harassment Training and Education, as adopted by the Fair Employment and Housing Commission, June 20, 2006**

Note: The June 20, 2006, regulations below modify December 16, 2005, proposed regulations. The original December 16, 2005, proposed regulations, at section 7288.0, were entirely underlined, as all the proposed language was new. To make this modified version easier to read, the original December 16, 2005, text below is shown plain, without underling. June 20, 2006, amendments to the December 16, 2005, proposed regulations below are shown with underlining, deletions to the December 16, 2005, proposed regulations are shown in ~~strikeout~~.

**7288.0 Harassment Training and Education**

(a) Definitions. For purposes of this section:

- (1) ~~“Contract worker”~~ “Contractor” is a person performing services pursuant to a contract, as meeting the criteria specified by Government Code section 12940, subdivision (j)(4)(A) (j)(5) for each working day in 20 consecutive weeks in the current calendar year or preceding calendar year.
- (2) “Employee” includes full time, part time, and temporary ~~and contract~~ workers. ~~There is no requirement that the 50 employees work at the same location or all reside in California.~~
- (3) “Employer” means any of the following:
  - A. any person engaged in any business or enterprise in California, who employs 50 or more employees to perform services for a wage or salary or ~~contract workers~~ contractors or any person acting as an agent of an employer, directly or indirectly.
  - B. the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. For the purposes of this section, governmental and quasi-governmental entities such as boards, commissions, local agencies and special districts are considered “political subdivisions of the state.”
- (4) “Having 50 or more employees” means employing or engaging fifty or more employees or contractors for each working day in any twenty consecutive weeks in the current calendar year or preceding calendar year. There is no requirement that the 50 employees or contractors work at the same location or all work or reside in California.

- (5) “Instructional Designer” under this section is ~~an the individual creating the content for a classroom training, e training or webinar.~~ responsible for writing, reviewing and/or approving the content of harassment training used by an employer to meet the requirements of this section. An instructional designer shall have the same content knowledge as a “Qualified Trainer.” An e-learning designer or technician not responsible for training content is not considered an “instructional designer.”
- (6) ~~“Other effective interactive training and education” includes non classroom instruction using audio, video, or computer technology, with an opportunity for feedback, the opportunity to ask questions and have them answered, and testing that measures progress and acquisition of knowledge. E training and webinars shall incorporate feedback or a participation component at least once every 15 minutes, so that employees are measurably engaged in the training.~~
- (6) A “qualified trainer” refers to a “trainer or educator” as defined in section 7288.0, subdivision (c).
- (7) ~~“Two hours” of harassment training is either, two hours of classroom or webinar training or, the amount of time that the same content may be covered in an e learning program for an average learner. E learning programs are not required to have a built in timer that causes rapid learners to view additional content until the two hour standard is met.~~
- (8) (7) “Supervisory employees” or “supervisors” under this section are supervisors defined under Government Code section 12926, subdivision (r).
- A. Supervisory employees need not be physically located in California so long as they directly supervise California employees.
- B. Attending harassment training does not create an inference that an employee is a supervisor.
- (9) (8) “New” supervisory employees are employees promoted or hired to a supervisory position after July 1, 2005.
- (9) “Two hours” of harassment training is two hours of classroom or two hours of webinar training or, in the case of an e-learning program, a program that takes the supervisor no less than two hours to complete.
- (10) ~~Training~~ Effective training can mean any of the following:
- A. “Classroom” training is in-person, ~~instructor led~~ trainer-instruction, created by ~~an~~ qualified instructional designer and provided to a supervisor by a qualified trainer, in a setting removed from the supervisor’s ~~usual work environment~~ daily duties.
- B. “E-learning” is individualized, computer-based training whose content is written, reviewed and approved ~~created~~ by ~~an~~ qualified instructional designer. An e-learning

program shall provide a link or directions on how to contact directly trainers or educators, either working for the employer or retained by the e-learning provider. These trainers or educators shall be available to answer questions and to provide guidance and assistance on harassment training issues within a reasonable period of time after the supervisor asks the question, but no less than two business days after the question is asked.

- C. ~~“Webinar” is a web-based~~ an internet-based seminar created by a qualified instructional designer and taught by a qualified trainer and transmitted over the internet or intranet in real time. A webinar must document and demonstrate that each supervisor who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training’s interactive content, discussion questions, hypothetical scenarios, quizzes or tests, and activities. The webinar must provide the supervisors an opportunity to ask questions, to have them answered and otherwise to seek guidance and assistance.
- D. Other effective interactive training and education” includes non-classroom instruction using audio, video or computer technology.
- E. For any of the above training methods, the instruction shall include questions that assess learning, skill-building activities that assess the supervisor’s application and understanding of content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions so that supervisors remain measurably engaged in the training.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Sections 12926(r); 12940(j)(4)(A); 12940(j)(5); 12950.1, subds. (a) & (c), Government Code.

#### (b) Training

- (1) Frequency of Training: An employer shall provide training under this section once every two years by tracking the training of each supervisor, measured two years from the date of completion of the last training of the individual supervisor. ~~, and may use either of the following methods or a combination of the two methods to track compliance.~~
  - A. ~~“Individual” Tracking: An employer may track its training requirement for each supervisor, measured two years from the date of completion of the last training of the individual supervisor.~~
  - B. ~~“Training year” tracking: An employer may designate a “training year” in which it trains its supervisors and thereafter must again retrain its supervisors by the end of the next “training year,” two years later. Thus, with this method, an employer who has trained its supervisors by December 31, 2005, must again train its supervisors by December 31, 2007.~~

(2) Documentation of Training: An employer shall keep documentation of the harassment training it has provided its employees under this section to track compliance, including the name of the supervisor trained, the date of training, the type of training, and the name of the trainer, educator or instructional designer and shall retain the records for a minimum of two years.

~~(2)~~ (3) Training at New Businesses. Businesses created after January 1, 2006, must provide training within six months of their establishment and thereafter biennially, measured either from the individual or training year tracking method. Businesses that expand to 50 employees and/or contractors and thus become eligible under these regulations, must provide training within six months of their eligibility and thereafter biennially.

~~(3)~~ (4) Training for New Supervisors. New supervisors shall be trained within six months of assuming their supervisory position and thereafter shall be trained once every two years, measured either from the individual or training year tracking method. A new supervisor who has received harassment training in compliance with this section within the prior two years either from a prior or alternate employer need only be given a copy, be required to read and to acknowledge receipt of the new employer's anti-harassment policy within six months of assuming the supervisor's new supervisory position. That supervisor shall otherwise be put on a two year tracking schedule based on the supervisor's last harassment training. To incorporate new supervisors into the employer's training year tracking schedule, a new supervisor may need to be retrained sooner than once every two years. For example, an employer has created a training year schedule designated as 2005, 2007, 2009, et cetera. A new supervisor is hired and receives harassment training in 2006. That employee would need to again be trained in 2007 along with the other supervisory employees and thereafter, follow the employer's two year training schedule.

~~(4)~~ (5) Duration of Training. The training required by this section does not need to be completed in two consecutive hours. For classroom training or webinars, the minimum duration of a training segment shall be no less than half an hour. For e-training, the minimum training segment shall be fifteen minutes. E-learning courses may include bookmarking features which allow a supervisor to pause their individual training so long as the actual e-learning program is two hours.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1(a), Government Code.

(c) ~~"Trainers or educators" under this section may include California licensed attorneys, human resource professionals, psychologists or others provided they must have legal education or practical experience in harassment, discrimination, and retaliation training and knowledge of California and federal laws prohibiting unlawful harassment, discrimination and retaliation to be able to answer questions from the participants. The terms "trainers or educators" also include instructional designers of training done under this section.~~

- (1) ~~Desirable qualities for an effective trainer or educator include a person who: can use various training methodologies; can facilitate small and large group discussions; is an effective listener; has a credible, positive professional reputation, and continues to learn about gender and cultural issues and concerns.~~
- (2) ~~Undesirable qualities for an effective trainer or educator include a person who is or has a reputation of being in the workplace or the instructional environment: a “hugger,” sexual, flirtatious, aggressive, arrogant, abusive, demeaning to women or men, telling offensive jokes or using sexual, racial, religious, sexual orientation or other protected bases stereotypes or derogatory language.~~
- (3) (1) The trainer or educator shall be qualified to train about the following:
- A. what is are unlawful harassment, discrimination and retaliation under both California and federal law.;
  - B. how to intervene when harassing behavior occurs in the workplace;
  - C. how to report harassment complaints;
  - D. how to respond to a harassment complaint;
  - E. how to investigate harassment complaints and an employer’s obligation to do so the employer’s obligation to conduct a workplace investigation of a harassment complaint;
  - F. the illegality of retaliation for filing a harassment complaint and how to prevent retaliation from occurring when an employee has filed a harassment complaint; and what constitutes retaliation and how to prevent it;
  - G. the employer’s essential components of an anti-harassment policy; and -
  - H. the effect of harassment on harassed employees, co-workers, harassers and employers.
- (2) The trainer or educator ~~may~~ shall use hypotheticals or examples that illustrate the course content and involve the supervisor through questions, problem solving, ~~or tests and quizzes~~ to insure that the information is understood.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1(a), Government Code.

(d) Content

The training mandated by California Government Code section 12950.1, shall include but is not limited to:

- (1) A definition of unlawful sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964. In addition to a definition of sexual harassment, an employer may provide a definition of other forms of harassment covered by the FEHA, as specified at Government Code section 12940, subdivision (j), and discuss how harassment of an employee can cover more than one basis.
- (2) FEHA and Title VII statutory provisions and case law concerning the prohibition against and the prevention of unlawful sexual harassment in employment.
- (3) The types of conduct that constitutes sexual harassment.
- (4) Remedies available for sexual harassment.
- (5) Strategies to prevent sexual harassment in the workplace.
- (6) “Practical examples,” ~~including but not limited to role plays, case studies, group discussions, and examples with which the employees will be able to identify and apply in their employment setting.~~ such as factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources which illustrate sexual harassment, discrimination and retaliation using training modalities such as role places, case studies and group discussions.
- (7) The limited confidentiality of the complaint process.
- (8) Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.
- (9) ~~Training on how~~ The employer’s obligation to conduct an effective workplace investigation of a harassment complaint.
- (10) Training on what to do if the supervisor is personally accused of harassment.
- (11) ~~Training on the contents of the employer’s anti-harassment policy and how to utilize it if a harassment complaint is filed.~~ The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed. Either the employer’s policy or a sample policy shall be provided to the supervisors. Regardless of whether the employer’s policy is used as part of the training, the employer shall give each supervisor a copy of its anti-harassment policy and require each supervisor to read and to acknowledge receipt of that policy.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Sections 12950; 12950.1, subds. (a) & (f), Government Code.

(e) Remedies

As part of an order in an adjudicatory proceeding pursuant to California Code of Regulations, title 2, section 7429, the Commission may issue an order finding an employer failed to comply with Government Code section 12950.1 and order such compliance within 60 days of the effective date of the Commission's order.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1(e), Government Code.

(f) Compliance with section 12950.1 prior to effective date of Commission regulations.

An employer who has made a substantial, good faith effort to comply with section 12950.1 by completing training of its supervisors prior to the effective date of these regulations shall be deemed to be in compliance with section 12950.1 regarding harassment training as though it had been done under these regulations.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1, Government Code.

~~7288.0~~ 7288.1 Labor Organizations. (Reserved.)

~~7288.1~~ 7288.2 Apprenticeship Programs. (Reserved.)

~~7288.2~~ 7288.3 Employment Agencies. (Reserved.)

NOTE: Authority cited: Section 12935